

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KURZWEIL EDUCATIONAL SYSTEMS, INC.,

Plaintiff,

v.

FREEDOM SCIENTIFIC, INC.,

Defendant.

Civil Action No.: 04-10965-NMG

**DEFENDANT'S INITIAL DISCLOSURE STATEMENT
PURSUANT TO FED. R. CIV. P. 26(a)(1)**

Defendant Freedom Scientific, Inc. ("Freedom") provides this Initial Disclosure Statement in accordance with Fed. R. Civ. P. 26(a)(1). These disclosures are based on information reasonably available to Freedom as of this date. Freedom reserves the right to supplement or modify these disclosures.

Freedom's disclosure represents a good faith effort to identify discoverable information it currently reasonably believes may be used to support its claims or defenses as required by Fed. R. Civ. P. 26(a)(1). These disclosures do not include information that may be used solely for impeachment purposes.

Freedom's disclosures are made without waiving, in any way: (1) any claim of privilege or work product; (2) the right to object on the grounds of competency, relevancy and materiality, hearsay, or any other proper ground, to the use of any such information, for any purpose, in whole or in part, in any subsequent proceeding in this action or any other action; and (3) the right to object on any and all grounds, at any time, to any other discovery request or proceeding involving or relating to the subject matter of these disclosures.

All of the disclosures set forth below are made subject to the above objections and qualifications.

I. Rule 26(a)(1)(A) Disclosure

Based on information reasonably available to Freedom at this time, the following are the names, and if known, the addresses of individuals that are likely to have discoverable information that Freedom may use to support its claims or defenses, unless used solely for impeachment. A brief identification of the subjects on which each listed individual may have such discoverable information is also provided.

1. Raymond C. Kurzweil
Kurzweil Technologies, Inc.
15 Walnut Street
Wellesley Hills, MA 02481

Subject matter: Named inventor on United States Patent Nos. 5,875,428 and 6,052,663 ("the '428 and '663 patents" respectively); subject matter of the '428 and '663 patents, including the scope and meaning of the claims; assignment and ownership of the '428 and '663 patents; scope and content of prior art to the '428 and '663 patents, Mr. Kurzweil's knowledge of that prior art, and the duty of disclosure; public disclosures of the subject matter of the '428 and '663 patents more than a year before their effective filing date; date of conception and reduction to practice of the subject matter claimed in the '428 and '663 patents; Kurzweil's delay in asserting the '428 and '663 patents against Freedom and the reasons therefor; any investigation of Freedom products performed by Kurzweil prior to filing suit.

2. Firdaus Bhathena
Relicore
One Burlington Woods
Burlington, MA 01803

Subject matter: Named inventor on United States Patent Nos. 5,875,428 and 6,052,663 ("the '428 and '663 patents" respectively); subject matter of the '428 and '663 patents, including the scope and meaning of the claims; assignment and ownership of the '428 and '663 patents; scope and content of prior art to the '428 and '663 patents, Mr. Bhathena's knowledge of that prior art, and the duty of disclosure; public disclosures of the subject matter of the '428 and '663 patents more than a year before their effective filing date; date of conception and reduction to practice of the subject matter claimed in the '428 and '663 patents;

Kurzweil's delay in asserting the '428 and '663 patents against Freedom and the reasons therefor; any investigation of Freedom products performed by Kurzweil prior to filing suit.

3. Brad Desmarais
Kurzweil Educational Systems, Inc.
14 Crosby Drive
Bedford, MA 01730-1402

Subject matter: Kurzweil's business; Kurzweil's claims of commercial success of the patented inventions; market information related to reading systems; sales and marketing of the patented inventions; damages claimed by Kurzweil due to Freedom's alleged infringement

4. Mark Dionne
Kurzweil Educational Systems, Inc.
14 Crosby Drive
Bedford, MA 01730-1402

Subject matter: Development, implementation, and operation of Kurzweil's reading system technologies

5. Michael Sokol
Kurzweil Educational Systems, Inc.
14 Crosby Drive
Bedford, MA 01730-1402

Subject matter: Kurzweil's business; Kurzweil's claims of commercial success of the patented inventions; market information related to reading systems; sales and marketing of the patented inventions; damages claimed by Kurzweil due to Freedom's alleged infringement

The following individuals may have discoverable information relevant to prior invention of the subject matter of the '428 and '663 patents under 35 U.S.C.

§ 102(g)(2) and/or 35 U.S.C. § 103:

6. Roberta Brosnahan
Freedom Scientific, Inc.
480 California Avenue, Suite 201
Palo Alto, CA 94035-0215
Phone: (650) 475-5435

7. Dr. Lawrence Boyd
Pasadero Incorporated
2043 E. Libra Drive
Tempe, Arizona 85283
Phone: (480) 838-3426
8. Mr. Chris Piedmonte
Eagle Creek Systems
1806 Rice Canyon Road
Fallbrook, CA 92028
Phone: (619) 990-7511
9. Mr. Kyle Lutes
Purdue University
Knob Hall of Technology, Room 235
401 N. Grant Street
West Lafayette, IN 47907-2021
Phone: (765) 494-5125
10. Mr. Jim Fruchterman
The Benetech Initiative
480 S. California Avenue, Suite 201
Palo Alto, CA 94306-1609
Phone: (650)475-5440
11. Mr. Dave Offen
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Phone: (650)475-5440
12. Ms. Clare Geoffray
644 Willow Glen Way
San Jose, CA 95125
Phone: (408) 279-3711
13. Mr. Ramana Krishnamshetty
3214 Cortona Dr.
San Jose, CA 95135
14. Dr. Robert Mahaffey
19 First St.
San Rafael, CA 94901

15. Dr. Katharine Butler
Butler Associates
10551 Hidden Mesa Place
Monterey, CA 93940
(831) 655-5629

16. Mr. Jim Bliss
JBliss Imaging Systems
PO 7382
Menlo Park, CA 94026
Phone: (650) 327-5477

Freedom expressly reserves the right to identify and call as witnesses additional persons if Freedom learns during the course of its investigation and discovery in this action that such persons have knowledge of discoverable information that Freedom may use to support its claims or defenses.

II. Rule 26(a)(1)(B) Disclosure

Based on information reasonably available to Freedom at this time, Freedom describes below by category and location the following documents, data compilations, and tangible things in the possession, custody, or control of Freedom, that Freedom may use to support its claims or defenses (excluding documents that may be used solely for impeachment):

1. Documents relating to the research, development, design, operation, use, conception, and reduction to practice of Freedom's WYNN and Test Talker products may be located at Freedom's offices in St. Petersburg, Florida or Palo Alto, California; Pasadero's office in Tempe, Arizona; and Benetech's office in Palo Alto, California.

2. Documents relating to marketing and sales of Freedom's WYNN and Test Talker products may be located at

Freedom's offices in St. Petersburg, Florida or Palo Alto, California and Benetech's office in Palo Alto, California.

3. Documents relating to the prior invention of the subject matter of the '428 and '663 patents under 35 U.S.C. § 102(g)(2) and/or 35 U.S.C. § 103 may be located at Freedom's offices in St. Petersburg, Florida or Palo Alto, California and Benetech's office in Palo Alto, California.

4. Prior art documents relating to the anticipation and/or obviousness of the subject matter of the '428 and '663 patents under 35 U.S.C. § 102(a), 102(b) and/or 103 may be located at Freedom's offices in St. Petersburg, Florida or Palo Alto, California and Benetech's office in Palo Alto, California.

5. Documents relating to invalidity of the '428 and '663 patents under 35 U.S.C. § 102(b) for public use or on-sale can be found in the file histories of the '428 and '663 patents.

III. Rule 26(a)(1)(C) Disclosure

Pursuant to Fed. R. Civ. P. 26(a)(1)(C), Freedom states that it seeks an award of its attorney's fees, pursuant to 35 U.S.C. § 285, and costs of suit. The amount of those fees and costs is not yet known.

IV. Rule 26(a)(1)(D) Disclosure

Freedom is unaware of any apparently pertinent insurance agreements at this time. However, Freedom reserves the right to supplement this disclosure if any pertinent insurance agreements are identified.

Respectfully submitted,

Dated: November 4, 2004



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FREEDOM SCIENTIFIC, INC.

CERTIFICATE OF SERVICE

I, Rachel Venturi, hereby certify that on November 4, 2004, a true and correct copy of the foregoing document was served by the indicated means to the persons at the addresses listed:

1. DEFENDANT'S INITIAL DISCLOSURE STATEMENT PURSUANT TO FED. R. CIV. P. 26(a)(1).

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- ☒ Via First Class Mail
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- ☒ Via Facsimile



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